As might be expected. there are differences as well as similarities in the New York and New Jersey laws. In order to obtain reciprocity on a general level, however, the relief available need not be identical in every respect, and certainly the procedure for obtaining the relief can vary. As stated in the *Betz* case, *supra,* by Justice Proctor, speaking for the Court, at 330: "We do not imply that N.J.S.A. 39:6-62 requires complete identity of the foreign legislation with ours. Some points of difference may, and in all probability must, exist. Reciprocity does not require that the foreign law exactly parallel that of New Jersey." Of course, in each State a claimant must satisfy the particular requirements of the law under which his claim is made.

In accordance with the foregoing, the Unsatisfied Claim and Judgment Fund Board should recognize claims of New York citizens for bodily injury or death suffered in accidents occurring in New Jersey on or after January 1, 1959.

Very truly yours,

DAVID D. FURMAN
Attorney General

By: THEODORE I. BOTTER
Deputy Attorney General

FEBRUARY 18, 1959

HONORABLE CARL HOLDERMAN
Commissioner of Labor and Industry
20 West Front Street
Trenton, New Jersey

FORMAL OPINION, 1959—No. 2

DEAR COMMISSIONER HOLDERMAN:

You have requested our opinion as to the legality of a proposed agreement under which agreement a builder would erect a structure to house the Department of Labor and Industry, and the State would lease and pay rent for the space for a suitable period of years. An option would be granted to the State empowering it, at stated intervals, to purchase the building during the life of the lease at a price in accordance with a sliding scale reflecting the depreciated value of the building and the fair market value at the time of purchase. In addition, the State, upon exercising the option, would pay a premium, determined at the time of, and included in, the agreement based upon the amount of total rental loss to the builder as a result of the exercise of the option.

In a recent opinion (Formal Opinion, 1957—No. 10, July 12, 1957) the Attorney General held that a "lease-purchase" agreement between the State and a private contractor for the construction of buildings to house State agencies would be improper. Under such an agreement the title to the property would remain in the contractor until the completion of all "rental" payments, whereupon it would vest automatically in the State. The proposed transaction was held not to constitute a true lease, but rather an installment purchase which violated the debt limitation provisions of Article VIII, Section II, paragraph 3 of the New Jersey Constitution in that the obligation to pay the "rent" constituted an indebtedness of the State, since the "rent" would not be compensation for the use of the structure but would consti-

tute payments of the purchase price. See *McCutcheon* v. *State Building Authority*, 13 N.J. 46 (1953).

The proposed lease embraced by the plan you have questioned would not create a liability beyond the current annual rental obligation. See *Ambrozich* v. *City of Eveleth*, 200 Minn. 473, 274 N.W. 635, 112 A.L.R. 269 (Sup. Ct. 1937); *City of Los Angeles* v. *Offner*, 19 Cal. 2d 483, 122 P. 2d 14, 145 A.L.R. 1358 (Sup. Ct. 1942); *Dean* v. *Kuchel*, 35 Cal. 2d 444, 218 P. 2d 521 (Sup. Ct. 1950); *Jefferson School Township* v. *Jefferson Township School Building Co.*, 212 Ind. 542, 10 N.E. 2d 608 (Sup. Ct. 1937); 112 A.L.R. 278; cf. *Kelley* v. *Earle*, 325 Pa. 337, 190 A. 140 (Sup. Ct. 1937); *Walinske* v. *Detroit-Wayne Joint Bldg. Authority*, 325 Mich. 562, 39 N.W. 2d 73 (Sup. Ct. 1949); *Heberer* v. *Board of Com'rs. of Chaffee County*, 88 Colo. 159, 293 P. 349 (Sup. Ct. 1930); *Walla Walla* v. *Walla Walla Water Company*, 172 U.S. 1, 19, 19 S. Ct. 77, 43 L. Ed. 341, 349 (1898); 15 *McQuillin, Municipal Corporations* (3rd ed. 1950), 394. Many of the State's present leases are for longer than a one year duration. That such governmental leases are valid has been judicially determined. *McMahon* v. *City of Bayonne*, 10 N.J. Misc. 12, 15 (Sup. Ct. 1932); *Viracola* v. *Long Branch*, 1 N.J. Misc. 200 (Sup. Ct. 1923); *DeBow* v. *Lakewood Township*, 131 N.J.L. 291 (Sup. Ct. 1944). In the *McCutcheon* case, *supra*, Justice Jacobs, with whom former Justice Brennan joined in dissenting and discussing an issue not reached by the majority, stated at page 70:

> "* * * the State of New Jersey had for years prior to the 1947 Convention (during which time the same constitutional restraints against pledging the State's credit existed) entered into many long-term leases; though these leases were excuted without any specific law supported by referendum, there never had been any suggestion that their execution violated any constitutional provision." (Parenthesis added)

And see *Passaic* v. *Consolidated Police, etc. Pension Fund Commission*, 18 N.J. 137 (1955).

In the present case, the proposed agreement affords to the State the additional and important advantage of having the premises built to meet its specific needs.

Under the proposed agreement the State would be free at any time during the term of the lease to exercise or refrain from exercising its option to buy. If the option were exercised, the prior rental payments would afford no credit toward the purchase price which, in fact, would be the fair market value of the building. Thus, there would be no creation of a debt or liability which, under the Constitution, would require a referendum approval.

The remaining question is whether annual general appropriation acts such as the current one, P.L. 1958, c. 64, would authorize the payments contemplated by the proposed agreement. Subject to available funds in Account T11 entitled "Rents: Fees and building," payments could be made to meet current rental obligations imposed by the lease. The rental payments by the State would be made as consideration for the current use and enjoyment of the premises and in consideration for the option to purchase. "Where an option is contained in a lease of premises, payment of rent is applicable as consideration for the agreement to convey at the named price." *Patsourakos* v. *Kolioutos*, 132 N.J. Eq. 87, 90 (Ch. 1942), aff'd 133 Eq. 37 (E. & A. 1942). Such payments would be authorized by the annual general appropriation act since "rent" includes payments made in consideration for an option to purchase as well as for the current use and enjoyment of the premises. *McCormick* v. *Stephany*, 61 N.J. Eq. 208 (Ch. 1900), *Patsourakos* v. *Kolioutos*, *supra*. The premium payment

due upon the exercise of the option would not become a debt or liability of the State until the year that the option was exercised. The question whether there is or may be an available appropriation authorizing payment of the option premium may be deferred until the election to exercise the option is made.

For the reasons advanced, it is our opinion that the proposed agreement would be valid under the Constitution and statutes of this State.

Very truly yours,

DAVID D. FURMAN
Attorney General
By: MARTIN L. GREENBERG
Deputy Attorney General

MARCH 20, 1959

COL. JOSEPH D. RUTTER, *Superintendent*
Division of State Police
State Police Headquarters
West Trenton, New Jersey

FORMAL OPINION 1959—No. 3

DEAR COLONEL RUTTER:

We have been asked whether bank guards employed to protect the transportation of securities and money and to perform other similar functions require permits to carry firearms.

In Formal Opinion 1956—No. 17 we advised you that even a member of an organized police department must secure a permit to *purchase* a pistol or revolver. N.J.S. 2A:151-32. However, our law has a clear distinction between the requirement of a permit to purchase a pistol and the requirement of a permit to carry a pistol. N.J.S. 2A:151-32, *supra*, requires every person without exception to obtain a permit before purchasing a pistol or revolver. N.J.S. 2A:151-41 makes it a crime to carry a pistol, revolver or other firearm in any automobile or other vehicle or concealed on the person without first having obtained a permit pursuant to N.J.S. 2A:151-44. However, N.J.S. 2A:151-43 expressly exempts certain described persons from the reach of N.J.S. 2A:151-41. Subsection (k) extends this exemption to "any guard in the employ of any * * * banking * * * institution of this State * * *."

The provisions of N.J.S. 2A:151-47 do not alter the result. This section provides for the issuance of permits to carry firearms to banking institutions in blank to be used by "messenger, clerks or other employees or agents * * * while engaged in the performance of their respective duties." The distinction between messengers and clerks on the one hand and guards on the other is clear. N.J.S. 2A:151-47 implies that messengers, clerks and similar employees are not within the exception for guards provided by N.J.S. 2A:151-43(k) and would otherwise be within the reach of N.J.S. 2A:151-41.

In conclusion, it is our opinion that bank guards do not require permits to carry firearms even though they would require permits to purchase them.

Very truly yours,

DAVID D. FURMAN
Attorney General
By: WILLIAM L. BOYAN
Deputy Attorney General